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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/220,955	12/28/1998	DONALD WAYNE FEDYK	77682-17	5397

7590

10/16/2002

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EXAMINER

DUONG, DUC T

ART UNIT

PAPER NUMBER

2663

DATE MAILED: 10/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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# Office Action Summary

Application No.

09/220,955

Applicant(s)

FEDYK ET AL.

Examiner

Duc T. Duong

Art Unit

2663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,13,14,16,18 and 20 is/are rejected.
- 7) ☒ Claim(s) 2,3,6-12,15,17 and 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Response to Amendment*

1. Regarding to the amendment filed on July 30, 2002, claims 1-20 are pending.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 4, 5, 13, 16, 18, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Callon (U.S. Patent 5,699,347).

Regarding to claims 1, 16, and 20, Callon discloses a communication network (Fig. 9) and method (Fig. 11) for a node A, B, C (col. 13 lines 46-47) to select a gateway from among at least two gateways 402-412 (col. 13 lines 47-51), comprising the steps of storing (Fig. 7 col. 10 lines 55-57) information associating a metric (distance), see Fig. 5 A col. 7 lines 22-24) with each gateway with respect to each of one or more destinations; upon receiving a connection request to a destination 462 (Fig. 11 col. 15 lines 19-21), the further steps of deterministically selecting a first gateway having an optimum metric with respect to the destination and sending a connection request to the first gateway 468 (Fig. 11 col. 15 lines 22-25); if a connection can not be established to the destination via the first gateway, randomly selecting a second gateway from among

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the gateways other than the first gateway, and sending a connection request to the second gateway 470 and 474 (Fig. 11 col. 15 lines 28-42).

Regarding to claim 4, Callon discloses the step of randomly selecting a second gateway (Fig. 10) applies a weighting factor (efficiency) to each gateway, the weighting factor taking into account the metric of each gateway with respect to the destination (col. 14 lines 34-35).

Regarding to claim 5, Callon discloses the step of randomly selecting a second gateway is further limited to the gateways whose metric with respect to the destination is within a pre-set range (feasible), see col. 14 lines 32-34.

Regarding to claim 13, Callon discloses the metric represents an approximation to a cost of reaching the destination with which the metric is associated through the gateway with which the metric is associated (col. 7 lines 37-39).

Regarding to claim 18, Callon discloses a node 300 (Fig. 7) comprising a memory 306 (col. 10 lines 53-55) for storing information associating a metric with each of one or more gateways with respect to each of one or more destinations reachable through the respective gateways and a routing engine 302 (col. 10 lines 55-61) with means for launching a connection request to a selected gateway and means for selecting the selected gateway which deterministically selects a first gateway having an optimum metric with respect to a destination, and if a connection can not be established to the destination via the first gateway, randomly selects a second gateway from among the gateways other than the first gateway.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Callon in view of Huang et al (U.S. Patent 6,301,244 B1).

Regarding to claim 14, Callon discloses all the limitation with respect to claim 1, includes a metric represents of cost (col. 7 lines 37-39). But, Callon fails to teach for a metric represents an approximation to the delay that would be experienced by a user if the connection route was established to the destination with which the metric is associated through the gateway with which the metric is associated.

However, Huang teaches for a route selection using a metric represents of delay (Fig. 3 lines 11-31).

Thus, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to use the metric represents of delay as taught by Huang in Callon's system with the motivation support live video and audio data communication of which cannot tolerate excessive delay.

***Response to Arguments***

6. Applicant's arguments filed on July 30, 2002 have been fully considered but they are not persuasive. On page 3, Applicant's argument of Callon does not disclose "randomly selecting a second gateway" or "randomly making a second routing decision"

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is directed to page 15, lines 12-25 of Applicant's specification. Herein, Applicant teach the random selection can based on some weight such as lower metric or criteria such as cost, of which is disclosed by Callon in Fig. 11, col. 15 lines 28-42 for selection of a path based on feasibility and efficiency as cited by in the previous rejection. Therefore, the selection of a path in Callon is "random" as recited in claims 1, 16, and 20. So the rejections 35 U.S.C. (102 and 103) remain held.

***Allowable Subject Matter***

7. Claims 2, 3, 6-12, 15, 17, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

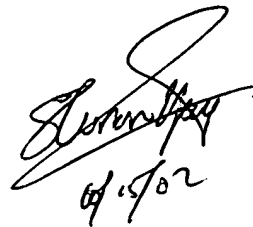
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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Duc T. Duong whose telephone number is 703-605-5146. The examiner can normally be reached on M-Th (8:30 AM-5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chau T. Nguyen can be reached on 703-308-5340. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9314 for regular communications and 703-872-9314 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9600.

DD  
October 8, 2002



Handwritten signature of Duc T. Duong, dated 10/15/02.